

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JOHN D. MORALES, §
§
Plaintiffs, §
v. § CIVIL ACTION NO.
QUEENS PARK OVAL ASSET HOLDING §
TRUST and ROUNDPOINT MORTGAGE §
SERVICING CORPORATION, §
§
Defendants. §

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441(a), Defendant, RoundPoint Mortgage Servicing Corporation (“RoundPoint”), removes this action from the 348th Judicial District Court of Tarrant County, Texas, to the United States District Court for the Northern District of Texas, Fort Worth Division, and as grounds for its removal respectfully shows the Court as follows:

I. STATE COURT ACTION

1. On October 3, 2014, Plaintiff, John D. Morales (“Plaintiff”), filed his Original Petition and Application for Temporary Restraining Order in the 348th Judicial District Court of Tarrant County, Texas, styled *John D. Morales v. Queens Park Oval Asset Holding Trust and RoundPoint Mortgage Servicing Corporation* (the “State Court Action”).

II. PROCEDURAL REQUIREMENTS

2. As of the date this Notice is filed, there is no return of service on file for RoundPoint. Absent proper service of process, removal is timely under 28 U.S.C. § 1446(b).¹

¹ *Murphy Bros., Inc. v. Michetti Pipe Stringing Inc.*, 526 U.S. 344, 347-48 (1999); *Schwartz v. Harang*, No. H-13-0038, 2013 U.S. Dist. LEXIS 51310, at *6-7 (S.D. Tex. 2013).

3. Simultaneous with RoundPoint's filing of this Notice, Defendant Queens Park is filing its Consent to Remove, wherein Queens Park, pursuant to 28 U.S.C. 1446(b)(2)(C) expresses its consent that this matter be removed federal court

4. This action is properly removed to this Court as the State Court Action is pending within this district and division.²

5. In accordance with 28 U.S.C. § 1446(a) and Northern District of Texas Local Rule 81.1, this Notice of Removal is accompanied by copies of the following:

Exhibit A An index of documents being filed;

Exhibit B A copy of the State Court Docket Sheet;

Exhibit C All documents filed in the State Court Action, including:

Exhibit C1 Plaintiff's Original Petition and Application for Temporary Restraining Order, filed on October 3, 2014;

Exhibit C2 Plaintiff's Amended Petition and Application for Temporary Restraining Order, also filed on October 3, 2014;

Exhibit C3 Temporary Restraining Order signed by the Judge Presiding on October 3, 2014; and

Exhibit C4 Citation and Return of Service concerning Queens Park dated October 9, 2014;

Exhibit C5 Defendants' Original Answer, filed on March 30, 2015;

Exhibit D Tarrant County Appraisal District valuation of 8036 Caladium Drive, North Richland Hills, Texas 76180; and

² 28 U.S.C. § 1441.

Exhibit E Two copies of Certificate of Interested Persons and Rule 7.1 Disclosure Statement.

6. RoundPoint is simultaneously filing a copy of this Notice of Removal in the 438th Judicial District Court of Tarrant County, Texas pursuant to 28 U.S.C. § 1446(d).

III. FEDERAL QUESTION JURISDICTION

7. This Court has original jurisdiction over this action because Plaintiff's claims arise under and necessarily depend on questions of federal law.³ Specifically, Plaintiff's Amended Petition alleges that Defendants violated 12 C.F.R. 1024.41(b)(2)(A).⁴

IV. SUPPLEMENTAL JURISDICTION

8. This Court also has jurisdiction over Plaintiffs' additional claims against Defendants because they are joined with the federal question claims and arise under the same case or controversy.⁵ Specifically, Plaintiff's Amended Petition asserts claims for violation of the Texas Debt Collection Act and the Texas Finance code and requests a temporary restraining order and injunctive relief. Each of Plaintiff's claims and requests is based on Defendants' attempted foreclosure of a single deed of trust.⁶

III. DIVERSITY JURISDICTION

9. Further, this Court has original jurisdiction over this action because there is complete diversity of the Parties, and the amount in controversy exceeds \$75,000.00.⁷

A. Complete Diversity Exists

³ See 28 U.S.C. § 1331.

⁴ See Exhibit C2, at ¶¶ 21-25.

⁵ See 28 U.S.C. §§ 1337, 1441(c).

⁶ See Exhibit C2.

⁷ See 28 U.S.C. § 1332(a).

10. This controversy is entirely between citizens of different states as required for diversity jurisdiction by 28 U.S.C. § 1332.

11. Plaintiff is a citizen of Texas.

12. Queens Park is a Delaware Statutory Trust is the trustee of a trust. When determining citizenship of a trust for purposes of diversity jurisdiction, it is the citizenship of the trustee which controls, not the citizenship of the beneficiaries of the trust.⁸ U.S. Bank National Trust Association (“U.S. Bank”) is the Trustee of Queens Park. U.S. Bank is a national banking association, so its citizenship is determined by the location of its main office as set forth in its articles of association.⁹ U.S. Bank’s main office is in Delaware. Thus, Queens Park is a citizen of Delaware for diversity purposes.

13. For diversity purposes, a corporation a citizen of every U.S. state in which it is incorporated and the state in which its principal place of business is located.¹⁰ RoundPoint incorporated in Florida and has its principal place of business in North Carolina. Therefore, RoundPoint is a citizen of Florida and North Carolina for the purposes of diversity jurisdiction.

14. Because Plaintiff is a citizen of Texas, Queens Park is a citizen of Delaware, and RoundPoint is a citizen of Florida and North Carolina, complete diversity exists.¹¹

B. The Amount in Controversy Exceeds \$75,000.00

15. The amount in controversy is over \$75,000.00. Plaintiff’s Amended Petition requests that the court grant a permanent injunction barring “any foreclosure proceedings in any form or manner by Defendant”¹²

⁸ *Navarro Sav. Assoc. v. Lee*, 446 U.S. 458, 464-66 (1980); *Manufacturers and Traders Trust Co. v. HSBC Bank USA, N.A.*, 564 F.Supp.2d 261, 263 (S.D.N.Y. 2008).

⁹ *Wachovia Bank, N.A. v. Schmidt*, 546 U.S. 303, 307 (2006); see 28 U.S.C. § 1348.

¹⁰ See 28 U.S.C. § 1332(c)(1).

¹¹ See 28 U.S.C. § 1332(a)(1).

16. It is well settled that when declaratory or injunctive relief is sought, the amount in controversy is measured by the “value of the object of the litigation.”¹³ Specifically, when a party seeks to prevent foreclosure, the value of the property determines the amount in controversy, and such value may be determined by the tax assessor appraisals.¹⁴

17. The Tarrant County Central Appraisal District values the subject property at \$159,100.¹⁵

18. Accordingly, the amount in controversy exceeds \$75,000.00.

IV. CONCLUSION

19. Removal of this action is proper under 28 U.S.C. §§ 1331, 1332 and 1441. This is a civil action brought in a state court, and the federal district courts have original jurisdiction under 28 U.S.C. § 1331 because this action arises under the laws of the United states and under 28 U.S.C. § 1332(a) because there is complete diversity and the amount in controversy exceeds \$75,000.00.

20. As a result, Defendant removes this action from the 348th Judicial District Court in Tarrant County, Texas to the United States District Court for the Northern District of Texas, Fort Worth Division, so that this Court may assume jurisdiction over the cause as provided by law.

Respectfully submitted,

/s/ Jeremy J. Overby
J. Garth Fennegan

¹² See Exhibit C2, at ¶ 27.

¹³ *Farkas v. GMAC Mortg., LLC*, 737 F.3d 338, 341 (5th Cir. 2013); *Leininger v. Leininger*, 705 F.2d 727, 729 (5th Cir. 1983).

¹⁴ *Valadez v. Bank of America, N.A. et al.*, 2013 U.S. Dist. LEXIS 97092 at *5-8 (W.D. Tex. July 11, 2013); *Zavala v. M&T Trust Co.*, 2011 U.S. Dist. LEXIS 147119 (W.D. Tex. Dec. 22, 2011).

¹⁵ See Exhibit G.

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Dallas, Texas 75219
(214) 520-3300
(214) 526-4145 (Facsimile)

ATTORNEYS FOR ROUNDPOINT
MORTGAGE SERVICING CORPORATION

Certificate of Service

I certify that this document was served in accordance with the Texas Rules of Civil Procedure on April 8, 2015, by the manner indicated upon the following persons:

Via CM/RRR No. 7196 9008 9111 8277 6044

D. Kimberli Wallace
9500 Ray White Rd., Suite 200
Fort Worth, Texas 76244
(817) 745-4581
(817) 953-7000
kwallace@kwlawfirm.net

/s/ Jeremy J. Overbey

Jeremy J. Overbey

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JOHN D. MORALES, §
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Plaintiffs, §
v. § CIVIL ACTION NO.
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QUEENS PARK OVAL ASSET HOLDING §
TRUST and ROUNDPOINT MORTGAGE §
SERVICING CORPORATION, §
§
Defendants. §

INDEX OF EXHIBITS

Pursuant to Northern District of Texas Local Rule 81.1, Defendant, RoundPoint Mortgage Servicing Corporation, files the following exhibits in support of its Notice of Removal:

Exhibit A An index of documents being filed;

Exhibit B A copy of the State Court Docket Sheet;

Exhibit C All documents filed in the State Court Action, including:

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North Richland Hills, Texas 76180; and

Exhibit E Two copies of Certificate of Interested Persons and Rule 7.1 Disclosure
Statement.

DMS-#694648-v1-Index_of_Exhibits_(Removal).docx



Tarrant County District Clerk Online

Thomas A. Wilder, District Clerk

Civil - Case and Transaction Information

3/31/15 2:47 PM

Cause Number: 348-274854-14

Date Filed: 10-03-2014

JOHN D MORALES

| VS |

QUEENS PARK OVAL ASSET
HOLDING TRUST, ET AL

Cause of Action: OTHER CIVIL, OTHER

Case Status: PENDING

File Mark	Description	Assessed Fee	Credit/Paid Fee
10-03-	<u>ORIG PET & APPL FOR TRO</u>	I	<u>0.00</u>
2014			
10-03-	<u>REO FOR CITATIONS</u>	I	<u>0.00</u>
2014			
10-03-	<u>PLTF ORIG PETITION</u>	N A	<u>274.00</u>
2014			
10-03-	<u>COURT COST (PAID) trans #3</u>	Y A	<u>274.00</u>
2014			
10-03-	<u>CIT-ISSUED ON ROUNDPOINT MORTGAGE SERVICING-On</u>	N A Svc	<u>8.00</u>
2014	<u>10/07/2014</u>		
10-03-	<u>CITATION</u>	V A Svc	<u>8.00</u>
2014			
10-03-	<u>COURT COST (PAID) trans #6</u>	Y A	<u>8.00</u>
2014			
10-03-	<u>COURT COST (PAID) trans #5</u>	Y A	<u>8.00</u>
2014			
10-03-	<u>T.R.O.-ISSUED ON QUEENS PARK OVAL ASSET HOLDING</u>	N A Svc	<u>8.00</u>
2014	<u>TRUST, H/R 10/17/2014 - 02:00-On 10/07/2014</u>		
10-03-	<u>COURT COST (PAID) trans #9</u>	Y A	<u>8.00</u>
2014			
10-03-	<u>CIVIL CASE INFO SHEET</u>		<u>0.00</u>
2014			
10-03-	<u>(PROPOSED) TEMP RESTRAING ORDR</u>	I	<u>0.00</u>
2014			
10-03-	<u>E-FILE TRANSACTION FEE</u>	N A	<u>2.00</u>
2014			
10-03-	<u>COURT COST (PAID) trans #13</u>	Y A	<u>2.00</u>
2014			
10-03-	<u>AMND PET & APPLCTN FOR T.R.O.</u>	I	<u>0.00</u>
2014			
10-03-	<u>E-FILE TRANSACTION FEE</u>	N A	<u>2.00</u>
2014			

10-03-	<u>COURT COST (PAID) trans #16</u>	Y A		<u>2.00</u>
2014				
10-03-	<u>***T.R.O. (BOND AMT: \$1000.00 - HRG: 10/17/14 @ 2:00 PM)***</u>	I		<u>0.00</u>
2014				
10-06-	<u>CASH BOND -CK #2563 PER ORDER TO ACCEPT FIRM CK</u>	Y		<u>1,000.00</u>
2014				
10-07-	<u>CITATION</u>	V A Svc		<u>-8.00</u>
2014				
10-07-	<u>CIT Sec of St-ISSUED ON QUEENS PARK OVAL ASSET HOLDING TRUST-On 10/07/2014</u>	N A Svc		<u>8.00</u>
2014				
10-07-	<u>Registry Investment</u>	Y		<u>-1,000.00</u>
2014				
10-09-	<u>T.R.O., SEC OF ST-ISSUED ON QUEENS PARK OVAL ASSET HOLDING TRUST H/R 10/17/2014 - 02:00-On 10/09/2014</u>	N Svc		<u>8.00</u>
2014				
10-09-	<u>COURT COST (PAID) trans #23</u>	Y		<u>8.00</u>
2014				
10-13-	<u>RETURNED CIT ON: QUEENS PARK OVAL ASSET HOLDING TR</u>	I		<u>0.00</u>
2014				
10-13-	<u>E-FILE TRANSACTION FEE</u>	N		<u>2.00</u>
2014				
10-13-	<u>COURT COST (PAID) trans #26</u>	Y		<u>2.00</u>
2014				
10-13-	<u>CIT Sec of St Tr# 21 RET EXEC(QUEENS PARK OVAL ASSET HOLDING TRUST) On 10/09/2014</u>	I		<u>0.00</u>
2014				
10-14-	<u>(DUP)RET CIT ON: QUEENS PARK OVAL ASSET HOLDING TR</u>	I		<u>0.00</u>
2014				
10-14-	<u>E-FILE TRANSACTION FEE</u>	N		<u>2.00</u>
2014				
10-14-	<u>COURT COST (PAID) trans #30</u>	Y		<u>2.00</u>
2014				
10-16-	<u>RET TRO ON : QUEENS PARK OVAL ASSET HOLDING TRUST</u>	I		<u>0.00</u>
2014				
10-16-	<u>E-FILE TRANSACTION FEE</u>	N A		<u>2.00</u>
2014				
10-16-	<u>COURT COST (PAID) trans #33</u>	Y A		<u>2.00</u>
2014				
10-16-	<u>T.R.O., SEC OF ST Tr# 23 RET EXEC(QUEENS PARK OVAL ASSET HOLDING TRUST) On 10/13/2014</u>	I		<u>0.00</u>
2014				
02-19-	<u>**ORDER OF INTENT TO DWOP(HRG 4-2-15/8:30AM)**</u>	L M		<u>0.00</u>
2015				
03-30-	<u>(ORIG ANS) DEFNS QUEENS PARK OVAL ASSET HOLDING TRUST & ROUNDPOINT MORTGAGE SRVICING CORPORATION</u>	I		<u>0.00</u>
2015				
03-30-	<u>E-FILE TRANSACTION FEE</u>	N		<u>2.00</u>
2015				

2015			
03-30-	<u>COURT COST (PAID) trans #38</u>	Y	<u>2.00</u>
2015			

District Clerk's Office

Tim Curry Justice Center

401 West Belknap, Fort Worth, Texas 76196, [Contact Us](#)

Please send questions and comments regarding the District Clerk web site to [District Clerk Webmaster](#)

FILED
TARRANT COUNTY
10/3/2014 12:56:26 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 348-274854-14

JOHN D. MORALES	§	IN THE DISTRICT COURT
Plaintiff,	§	
V.	§	
QUEENS PARK OVAL ASSET	§	JUDICIAL DISTRICT
HOLDING TRUST AND	§	
ROUNDPOINT MORTGAGE	§	
SERVICING CORPORATION	§	
Defendant.	§	TARRANT COUNTY, TEXAS

**ORIGINAL PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, John D. Morales, who files this Original Petition, in the interest of justice and fairness, and for causes of action and violations complained of as stated herein.

DISCOVERY CONTROL PLAN LEVEL

1. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery in this case under Level 3.

PARTIES AND SERVICE

2. Plaintiff, John D. Morales is an individual who owns real property at 8036 Caladium Dr., North Richland Hills, TX 76180. John D. Morales is hereinafter referred to as he, him or "Plaintiff".

3. Defendant, QUEENS PARK OVAL ASSET HOLDING TRUST ("Queens"), is a foreign entity, doing business under the laws of the State of Texas but no registration can be found with the Secretary of State of the State of Texas. Service of

ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER

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process on Defendant may be effected pursuant to Sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving The Secretary of State of Texas at P.O. Box 12079, Austin, Texas 78711 to be delivered to Queen's Park Oval Asset Holding Trust c/o U.S. Bank Trust National Association at 300 Delaware Avenue, 9th Floor, Wilmington, Delaware, 19801.

4. Defendant, ROUNDPOINT MORTGAGE SERVICING CORPORATION ("RoundPoint"), is a foreign entity, doing business under the laws of the State of Texas but no registration can be found with the Secretary of State of the State of Texas. Service of process on Defendant may be effected pursuant to Sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving Corporation Service Company dba CSC – Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, TX 78701.

JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this Court.

6. This Court has personal jurisdiction because the property which is the subject of this litigation is located in Texas and Defendants are doing business within this state.

7. Venue in this cause is proper in Tarrant County, Texas pursuant to Section 17.56 of the Texas Business and Commerce Code and under Section 15.001 of the Texas Civil Practice and Remedies Code because this action involves real property, and the property is located in Tarrant County, Texas.

FACTS

8. Plaintiff is the current record owner of the property located at 8036 Caladium Drive, North Richland Hills, TX 76180 and more accurately described as:

LOT 24, BLOCK D OF HOME TOWN NRH WEST-PHASE 3, AN ADDITION, TO THE CITY OF NORTH RICHLAND HILLS, TARRANT COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET A, SLIDE 10054 OF THE PLAT RECORDS OF TARRANT COUNTY, TEXAS (the "*Property*").

9. Plaintiff signed a Promissory Note in order to purchase the Property on or about March 27, 2008 for the amount of One Hundred Forty Eight Thousand Eighty and no/Dollars (\$148,080.00). The copies of at least one such Promissory Note show Cendera Funding, Inc. as the original mortgagee ("*Original Mortgagee*").

10. The Note is secured by that certain Deed of Trust dated of same date, executed by Plaintiff and delivered to Thomas F. Vetters, as Trustee ("Deed of Trust") on behalf of Original Mortgagee.

11. The public record of Tarrant County, Texas does not show any assignment, transfer or conveyance of the Deed of Trust to Queens.

12. Plaintiff has now received correspondence from Defendants threatening to foreclose on his home and such foreclosure is to be effected by a substitute trustee other than the above named Trustee.

13. The Notice of Substitute Trustee's Sale which was posted with the Tarrant County Clerk for the sale of the Property identifies the Current Mortgagee as Queens, however, a review of the public records of Tarrant County, Texas does not reflect any assignment, transfer or conveyance of the Deed of Trust to Queens.

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14. As there is no assignment of the Deed of Trust executed and filed of record from Original Mortgagee to Queens it appears that there is no public record available at the time of the notice to Plaintiff of Defendants' intentions of selling the property at the October 7, 2014 foreclosure sale showing that Defendant who has initiated the foreclosure sale has any authority to conduct such sale on behalf of Original Mortgagee.

15. Plaintiff does not know how or when Defendant obtained the right to collect his mortgage payments. Plaintiff does not know who Defendant is, and does not believe they own the mortgage. *There is ambiguity over who the holder of the note is.*

16. Plaintiff was in the process of obtaining a loan modification from an entity by the name of Flagstar Bank in early 2013. While this loan modification was in process, Plaintiff was informed that the Deed of Trust had been assigned to Defendant and that RoundPoint Mortgage would be the servicer of Plaintiffs loan. So Plaintiff then had to start the loan modification process all over again in May of 2014.

17. Many months have passed and Plaintiff has not received a denial or an approval of the loan modification. Plaintiff was informed that his loan modification was under review.

18. Plaintiff has the funds to make monthly payments but was told not to submit funds since the loan modification was in review. This modification review was still in underwriting when Defendant posted Plaintiff's Property for foreclosure.

19. The Deed of Trust gives Plaintiff an opportunity to reinstate his loan, however, by not giving Plaintiff a notice that the loan modification had been denied, or

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given him a reinstatement amount, Defendant took this right away from Plaintiff. This is a breach of the Deed of Trust by Defendant.

VIOLATION OF 12 CFR SECTION 1024.41

20. Plaintiff incorporates by reference the allegations set forth above, as if the same were fully set forth herein.

21. Section 1024.41 of 12 CFR requires a servicer in receipt of a loss mitigation application within 45 days or more before a foreclosure sale to review the application to determine if it is complete. 12 CFR Section 1024.41(b)(2)(A). The Servicer must then notify the borrower within 5 days of receiving the loss mitigation application that the servicer acknowledges receipt of the application and that the servicer has determined that the application is either complete or incomplete. 12 CFR 1024.41(b)(2)(B). If the application is incomplete, the servicer must identify the additional documents and information needed. 12 CFR 1024.41(b)(2)(B). The Servicer must then provide the borrower within 30 days of receipt of the application with written notice stating the servicer's determination as to which loss mitigation option is available to the borrower. 12 CFR 1024.41(c)(1)(ii). Further, if the borrower had applied for a loan modification and the servicer denies the request, the servicer must include in the notice described by 12 CFR Section 1024.41(c)(1)(ii) the specific reason or reasons for the servicer's determination. 12 CFR Section 1024.41(d). Finally loan modifications denials are appealable. 12 CFR Section 1024.41(h).

22. Plaintiff submitted a loan modification application with Defendant, which is a loss mitigation application as understood by 12 CFR Section 1024.41(b). Yet Defendant has failed to complete with 12 CFR Section 1024.41 and has specifically

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failed to give Plaintiff the notice required by 12 CFR Section 1024.41(c)(1)(ii). Consequently, Defendant does not have the authority to execute any foreclosure sale against Plaintiff's Property until it has satisfied the requirements of 12 CFR Section 1024.41.

23. The provisions of 12 CFR Section 1024.41 are not merely a defense to foreclosure but are actionable under 12 USC 2605(f), which in turn allows for the recovery of actual damages, court costs, statutory damages of up to \$2000, and attorney fees.

24. In addition, Plaintiffs were not given proper notice pursuant to the statutory requirement of the Texas Debt Collection Act. The Texas Debt Collection Act requires that a debtor be given at least 30 days to request and obtain verification of the debt prior to any notice of foreclosure proceedings on a debtor's homestead. Defendant did not provide such notice to Plaintiffs.

AGENCY AND RESPONDEAT SUPERIOR

25. Whenever in this petition it is alleged that Defendant, did, or failed to do, any act, thing and/or omission, it is meant that Defendant itself or its agents, officers, servants, employees, vice principals, or representatives either did or failed to do such act, thing and/or omission, and it was done with the full authorization or ratification of Defendant, and/or done in the normal routine, course and scope of the agency or employment of Defendant or its agents, officers, servants, employees, vice principals, or representatives and/or with actual and/or apparent authority of Defendant.

PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF

26. In part because Plaintiff will otherwise be irreparably harmed without an adequate remedy at law, Plaintiff seeks injunctive relief to bar any transfer of any interest of his homestead. Plaintiff which is at issue in this suit, seeks to bar any foreclosure proceedings in any form or manner by Defendant or otherwise, to stay any proceeding in any other Court to seek foreclosure of the Property or possession of the Property by or for Defendant. The Property is Plaintiff's residential homestead, and Plaintiff will be irreparably injured without adequate remedy at law if the foreclosure is permitted to take place and the Plaintiff's use and enjoyment of the Property is impaired, or if Plaintiff is further threatened with eviction or evicted. Subsequent recovery by Plaintiff is probable, in view of the factual and legal substance, and the number and size of the claims he makes, the possibility of doubling or tripling of some damages, and his recovery of fees and costs. The risk to Defendant associated with issuance of a Temporary Restraining Order and/or permanent injunction is truly minimal, and issuance of such an order would be in the public interest and specifically in the interest of the integrity of the banking and home lending system that the Texas Legislature and the Congress have addressed in numerous statutes. It would be in the public interest that parties are not permitted to seek foreclosure of claimed liens against Property in circumstances where there have been substantial and numerous violations of applicable law.

DAMAGES FOR PLAINTIFF

27. Plaintiff seeks all statutory damages, including double or treble damages, which are awardable to him under each and every of the herein cited statutes and/or

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constitutional provisions. Plaintiff also sues for his actual damages, and for his reasonable and necessary attorney fees and costs of court under each and every applicable claim at common law and under a cited statute and statutes into which each such statute may be incorporated, respectively. Plaintiff's damages are in each respect in excess of the minimum jurisdictional limits of this Court. Plaintiff seeks damages less than \$100,000 and non-monetary relief.

28. Plaintiff seeks exemplary damages for Defendant's wrongful conduct in violation of various state laws, which Defendant violated knowingly or with reckless disregard for such law, in an amount to be determined as fair and reasonable by the trier of fact.

REQUEST FOR DISCLOSURE

29. This Petition includes Plaintiff's Request for Disclosure to the named Defendant. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within 50 days of service of this request, the information or material described in rules 194.2(a)-(l).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Defendant be cited to appear and answer herein, and that the Court immediately issue a Temporary Restraining Order against Defendant to bar any foreclosure or forcible detainer proceedings in any form or manner by Defendant or otherwise of the Property.

Further, Plaintiff respectfully prays that upon a final trial, the Court:

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- a. Enter judgment in favor of Plaintiff for statutory damages, costs, and attorney fees as provided by Tex. Fin. Code Ann. Sections 392.403 and 392.404;
- b. Award Plaintiff compensatory damages as allowed by law;
- c. Award Plaintiff exemplary damages as allowed by law;
- d. Award Plaintiff pre-judgment and post-judgment interest as allows by law;
- e. Award Plaintiff his reasonable and necessary attorney fees and costs; and
- f. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,
D. KIMBERLI WALLACE, PLLC

/s/ D. Kimberli Wallace
D. Kimberli Wallace
Texas Bar No. 00792901
9500 Ray White Rd., Suite 200
Fort Worth, Texas 76244
Tel. (817) 745-4581
Fax (817) 953-7000
Email: kwallace@kwlawfirm.net
Attorney for Plaintiff

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CERTIFICATE OF COMPLIANCE

Comes now, D. Kimberli Wallace, attorney of record for Plaintiff in the above-entitled and numbered cause and states as follows:

I have contacted the party against whom relief is sought ex parte, Trustee Corps, and notified them of the application for a temporary restraining order and they have stated that they do not wish to be heard.

Dated: October 2, 2014

Respectfully submitted,

D. Kimberli Wallace

D. Kimberli Wallace
Attorney for Plaintiff

348-274854-14

VERIFICATION

STATE OF TEXAS

S
S
S

COUNTY OF Tarrant

BEFORE ME, the undersigned authority, personally appeared John D. Moche, who, on oath, and has stated to me that he/she has read the statements made in the foregoing Original Petition and the portions that constitute an application for temporary restraining order and every statement of fact contained in the petition that is averred to be true and correct from his/her personal knowledge.

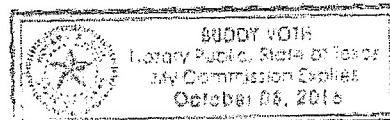
Name: J. Moche

STATE OF TEXAS

COUNTY OF Tarrant.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 20 day of September, 2014, to certify which witness my hand and seal of office.


Notary Public, State of Texas



348-274854-14

CAUSE NO. 348-274854-14

FILED
TARRANT COUNTY
10/3/2014 2:20:25 PM
THOMAS A. WILDER
DISTRICT CLERK

JOHN D. MORALES	§ IN THE DISTRICT COURT
Plaintiff,	§
V.	§
QUEENS PARK OVAL ASSET HOLDING TRUST AND ROUNDPOINT MORTGAGE SERVICING CORPORATION	§ 348 TH JUDICIAL DISTRICT
Defendant.	§§ TARRANT COUNTY, TEXAS

AMENDED PETITION AND
APPLICATION FOR TEMPORARY RESTRAINING ORDER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, John D. Morales, who files this Amended Original Petition, in the interest of justice and fairness, and for causes of action and violations complained of as stated herein.

DISCOVERY CONTROL PLAN LEVEL

1. Pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, Plaintiff intends to conduct discovery in this case under Level 3.

PARTIES AND SERVICE

2. Plaintiff, John D. Morales is an individual who owns real property at 8036 Caladium Dr., North Richland Hills, TX 76180. John D. Morales is hereinafter referred to as he, him or "Plaintiff".

3. Defendant, QUEENS PARK OVAL ASSET HOLDING TRUST ("Queens"), is a foreign entity, doing business under the laws of the State of Texas but no registration can be found with the Secretary of State of the State of Texas. Service of

ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER

PAGE 1

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process on Defendant may be effected pursuant to Sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving The Secretary of State of Texas at P.O. Box 12079, Austin, Texas 78711 to be delivered to Queen's Park Oval Asset Holding Trust c/o U.S. Bank Trust National Association at 300 Delaware Avenue, 9th Floor, Wilmington, Delaware, 19801.

4. Defendant, ROUNDPOINT MORTGAGE SERVICING CORPORATION ("RoundPoint"), is a foreign entity, doing business under the laws of the State of Texas but no registration can be found with the Secretary of State of the State of Texas. Service of process on Defendant may be effected pursuant to Sections 5.201 and 5.255 of the Texas Business Organizations Code, by serving Corporation Service Company dba CSC – Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, TX 78701.

JURISDICTION AND VENUE

5. The subject matter in controversy is within the jurisdictional limits of this Court.

6. This Court has personal jurisdiction because the property which is the subject of this litigation is located in Texas and Defendants are doing business within this state.

7. Venue in this cause is proper in Tarrant County, Texas pursuant to Section 17.56 of the Texas Business and Commerce Code and under Section 15.001 of the Texas Civil Practice and Remedies Code because this action involves real property, and the property is located in Tarrant County, Texas.

ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER

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FACTS

8. Plaintiff is the current record owner of the property located at 8036 Caladium Drive, North Richland Hills, TX 76180 and more accurately described as:

LOT 24, BLOCK D OF HOME TOWN NRH WEST-PHASE 3, AN ADDITION, TO THE CITY OF NORTH RICHLAND HILLS, TARRANT COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET A, SLIDE 10054 OF THE PLAT RECORDS OF TARRANT COUNTY, TEXAS (the "*Property*").

9. Plaintiff signed a Promissory Note in order to purchase the Property on or about March 27, 2008 for the amount of One Hundred Forty Eight Thousand Eighty and no/Dollars (\$148,080.00). The copies of at least one such Promissory Note show Cendera Funding, Inc. as the original mortgagee ("*Original Mortgagee*").

10. The Note is secured by that certain Deed of Trust dated of same date, executed by Plaintiff and delivered to Thomas F. Vettors, as Trustee ("Deed of Trust") on behalf of Original Mortgagee.

11. The public record of Tarrant County, Texas does not show any assignment, transfer or conveyance of the Deed of Trust to Queens.

12. Plaintiff has now received correspondence from Defendants threatening to foreclose on his home and such foreclosure is to be effected by a substitute trustee other than the above named Trustee.

13. The Notice of Substitute Trustee's Sale which was posted with the Tarrant County Clerk for the sale of the Property identifies the Current Mortgagee as Queens, however, a review of the public records of Tarrant County, Texas does not reflect any assignment, transfer or conveyance of the Deed of Trust to Queens.

ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER

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14. As there is no assignment of the Deed of Trust executed and filed of record from Original Mortgagee to Queens it appears that there is no public record available at the time of the notice to Plaintiff of Defendants' intentions of selling the property at the October 7, 2014 foreclosure sale showing that Defendant who has initiated the foreclosure sale has any authority to conduct such sale on behalf of Original Mortgagee.

15. Plaintiff does not know how or when Defendant obtained the right to collect his mortgage payments. Plaintiff does not know who Defendant is, and does not believe they own the mortgage. *There is ambiguity over who the holder of the note is.*

16. Plaintiff was in the process of obtaining a loan modification from an entity by the name of Flagstar Bank in early 2013. While this loan modification was in process, Plaintiff was informed that the Deed of Trust had been assigned to Defendant and that RoundPoint Mortgage would be the servicer of Plaintiffs loan. So Plaintiff then had to start the loan modification process all over again in May of 2014.

17. Many months have passed and Plaintiff has not received a denial or an approval of the loan modification. Plaintiff was informed that his loan modification was under review.

18. Plaintiff has the funds to make monthly payments but was told not to submit funds since the loan modification was in review. This modification review was still in underwriting when Defendant posted Plaintiff's Property for foreclosure.

19. The Deed of Trust gives Plaintiff an opportunity to reinstate his loan, however, by not giving Plaintiff a notice that the loan modification had been denied, or

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given him a reinstatement amount, Defendant took this right away from Plaintiff. This is a breach of the Deed of Trust by Defendant.

20. Plaintiff has now received correspondence from Defendant that they will foreclose on his home on October 7, 2014.

VIOLATION OF 12 CFR SECTION 1024.41

21. Plaintiff incorporates by reference the allegations set forth above, as if the same were fully set forth herein.

22. Section 1024.41 of 12 CFR requires a servicer in receipt of a loss mitigation application within 45 days or more before a foreclosure sale to review the application to determine if it is complete. 12 CFR Section 1024.41(b)(2)(A). The Servicer must then notify the borrower within 5 days of receiving the loss mitigation application that the servicer acknowledges receipt of the application and that the servicer has determined that the application is either complete or incomplete. 12 CFR 1024.41(b)(2)(B). If the application is incomplete, the servicer must identify the additional documents and information needed. 12 CFR 1024.41(b)(2)(B). The Servicer must then provide the borrower within 30 days of receipt of the application with written notice stating the servicer's determination as to which loss mitigation option is available to the borrower. 12 CFR 1024.41(c)(1)(ii). Further, if the borrower had applied for a loan modification and the servicer denies the request, the servicer must include in the notice described by 12 CFR Section 1024.41(c)(1)(ii) the specific reason or reasons for the servicer's determination. 12 CFR Section 1024.41(d). Finally loan modifications denials are appealable. 12 CFR Section 1024.41(h).

ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER

PAGE 5

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23. Plaintiff submitted a loan modification application with Defendant, which is a loss mitigation application as understood by 12 CFR Section 1024.41(b). Yet Defendant has failed to complete with 12 CFR Section 1024.41 and has specifically failed to give Plaintiff the notice required by 12 CFR Section 1024.41(c)(1)(ii). Consequently, Defendant does not have the authority to execute any foreclosure sale against Plaintiff's Property until it has satisfied the requirements of 12 CFR Section 1024.41.

24. The provisions of 12 CFR Section 1024.41 are not merely a defense to foreclosure but are actionable under 12 USC 2605(f), which in turn allows for the recovery of actual damages, court costs, statutory damages of up to \$2000, and attorney fees.

25. In addition, Plaintiffs were not given proper notice pursuant to the statutory requirement of the Texas Debt Collection Act. The Texas Debt Collection Act requires that a debtor be given at least 30 days to request and obtain verification of the debt prior to any notice of foreclosure proceedings on a debtor's homestead. Defendant did not provide such notice to Plaintiffs.

AGENCY AND RESPONDEAT SUPERIOR

26. Whenever in this petition it is alleged that Defendant, did, or failed to do, any act, thing and/or omission, it is meant that Defendant itself or its agents, officers, servants, employees, vice principals, or representatives either did or failed to do such act, thing and/or omission, and it was done with the full authorization or ratification of Defendant, and/or done in the normal routine, course and scope of the agency or

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employment of Defendant or its agents, officers, servants, employees, vice principals, or representatives and/or with actual and/or apparent authority of Defendant.

PLAINTIFF'S CLAIM FOR INJUNCTIVE RELIEF

27. In part because Plaintiff will otherwise be irreparably harmed without an adequate remedy at law, Plaintiff seeks injunctive relief to bar any transfer of any interest of his homestead. Plaintiff which is at issue in this suit, seeks to bar any foreclosure proceedings in any form or manner by Defendant or otherwise, to stay any proceeding in any other Court to seek foreclosure of the Property or possession of the Property by or for Defendant. The Property is Plaintiff's residential homestead, and Plaintiff will be irreparably injured without adequate remedy at law if the foreclosure is permitted to take place and the Plaintiff's use and enjoyment of the Property is impaired, or if Plaintiff is further threatened with eviction or evicted. Subsequent recovery by Plaintiff is probable, in view of the factual and legal substance, and the number and size of the claims he makes, the possibility of doubling or tripling of some damages, and his recovery of fees and costs. The risk to Defendant associated with issuance of a Temporary Restraining Order and/or permanent injunction is truly minimal, and issuance of such an order would be in the public interest and specifically in the interest of the integrity of the banking and home lending system that the Texas Legislature and the Congress have addressed in numerous statutes. It would be in the public interest that parties are not permitted to seek foreclosure of claimed liens against Property in circumstances where there have been substantial and numerous violations of applicable law.

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DAMAGES FOR PLAINTIFF

28. Plaintiff seeks all statutory damages, including double or treble damages, which are awardable to him under each and every of the herein cited statutes and/or constitutional provisions. Plaintiff also sues for his actual damages, and for his reasonable and necessary attorney fees and costs of court under each and every applicable claim at common law and under a cited statute and statutes into which each such statute may be incorporated, respectively. Plaintiff's damages are in each respect in excess of the minimum jurisdictional limits of this Court. Plaintiff seeks damages less than \$100,000 and non-monetary relief.

29. Plaintiff seeks exemplary damages for Defendant's wrongful conduct in violation of various state laws, which Defendant violated knowingly or with reckless disregard for such law, in an amount to be determined as fair and reasonable by the trier of fact.

REQUEST FOR DISCLOSURE

30. This Petition includes Plaintiff's Request for Disclosure to the named Defendant. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, you are requested to disclose, within 50 days of service of this request, the information or material described in rules 194.2(a)-(l).

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Defendant be cited to appear and answer herein, and that the Court immediately issue a Temporary Restraining Order against Defendant to bar any foreclosure or forcible

ORIGINAL PETITION AND APPLICATION FOR
TEMPORARY RESTRAINING ORDER

PAGE 8

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detainer proceedings in any form or manner by Defendant or otherwise of the Property.

Further, Plaintiff respectfully prays that upon a final trial, the Court:

- a. Enter judgment in favor of Plaintiff for statutory damages, costs, and attorney fees as provided by Tex. Fin. Code Ann. Sections 392.403 and 392.404;
- b. Award Plaintiff compensatory damages as allowed by law;
- c. Award Plaintiff exemplary damages as allowed by law;
- d. Award Plaintiff pre-judgment and post-judgment interest as allows by law;
- e. Award Plaintiff his reasonable and necessary attorney fees and costs; and
- f. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,
D. KIMBERLI WALLACE, PLLC

/s/ D. Kimberli Wallace
D. Kimberli Wallace
Texas Bar No. 00792901
9500 Ray White Rd., Suite 200
Fort Worth, Texas 76244
Tel. (817) 745-4581
Fax (817) 953-7000
Email: kwallace@kwlawfirm.net
Attorney for Plaintiff

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CERTIFICATE OF COMPLIANCE

Comes now, D. Kimberli Wallace, attorney of record for Plaintiff in the above-entitled and numbered cause and states as follows:

I have contacted the party against whom relief is sought ex parte, Trustee Corps, and notified them of the application for a temporary restraining order and they have stated that they do not wish to be heard.

Dated: October 2, 2014

Respectfully submitted,

D. Kimberli Wallace
D. Kimberli Wallace
Attorney for Plaintiff

348-274854-14

VERIFICATION

STATE OF TEXAS

§
§
§

COUNTY OF Tarrant

BEFORE ME, the undersigned authority, personally appeared John D. Morales, who, on oath, and has stated to me that he/she has read the statements made in the foregoing Original Petition and the portions that constitute an application for temporary restraining order and every statement of fact contained in the petition that is averred to be true and correct from his/her personal knowledge.

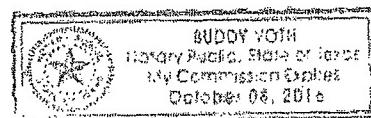
Name: John D. Morales

STATE OF TEXAS

COUNTY OF Tarrant

SUBSCRIBED AND SWEORN TO BEFORE ME on this the 22 day of
September, 2014, to certify which witness my hand and seal of office.

Buddy Yoth
Notary Public, State of Texas



FILED
TARRANT COUNTY
10/3/2014 12:56:26 PM
THOMAS A. WILDER
DISTRICT CLERK

348-274854-14

CAUSE NO.

JOHN D. MORALES

IN THE DISTRICT COURT

Plaintiff,

v.

QUEENS PARK OVAL ASSET
HOLDING TRUST AND
ROUNDPOINT MORTGAGE
SERVICING CORPORATION

348th JUDICIAL DISTRICT

Defendant.

TARRANT COUNTY, TEXAS

TEMPORARY RESTRAINING ORDER

The Motion of **JOHN D. MORALES**, the Plaintiff in the above Cause Number, for a Temporary Restraining Order came to be heard ~~ex parte~~.^{*} The said Plaintiff, appeared by attorney of record and the matter was taken under submission by the Court. The Court after due consideration finds and determines, having examined the complaint of the Plaintiff, that the Plaintiff is entitled to a Temporary Restraining order and that unless Defendant, **QUEENS PARK OVAL ASSET HOLDING TRUST ("Defendant")** is immediately restrained from the commission of the acts hereinafter prohibited, Defendant will commit such acts before notice of the hearing on temporary injunction can be served and a hearing had.

IT IS THEREFORE ORDERED that Defendant is hereby immediately restrained from:

- 1) Exercising, conducting or proceeding on any foreclosure sale, transfer or conveyance of the Property (as defined herein) from the date of entry of this order until further order of this Court.
- 2) Directing or assisting in taking possession LOT 24, BLOCK D OF HOME TOWN NRH WEST-PHASE 3, AN ADDITION, TO THE CITY OF NORTH RICHLAND HILLS, TARRANT COUNTY, TEXAS ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET A, SLIDE 10054 OF THE PLAT RECORDS OF TARRANT COUNTY, TEXAS also more commonly known as 8036 Caladium Drive, North Richland Hills, TX 76180 ("Property").

This Restraining Order is effective immediately and shall continue in force and effect until further order of this Court or until it expires by operation of law.

Temporary Restraining Order

1

* Pursuant to the "Certificate of Compliance,"
Defendant did not wish to be heard. (W)

Court's Minutes
Transaction # 18



E-MAILED
10/6/14

348-274854-14

This Order shall not be effective unless and until Plaintiff executes and files with the Clerk a bond, in conformity with the law in the amount of one thousand and no/100 Dollars (\$1000.00) - posting of same via Counsel's check is acceptable.

IT IS FURTHER ORDERED that the Clerk shall issue notice to Defendant and Defendant is hereby ORDERED to appear with this Court at 401 W. Belknap, Fort Worth, Texas on October 17, 2014, at 2:00 o'clock p.m.. The purpose of the hearing is to determine whether, during the pendency of this case:

- 1) The preceding Temporary Restraining Order should be made a Temporary Injunction pending final hearing.
- 2) The Court should make such other and further orders respecting the Property as may be deemed necessary and equitable.

SIGNED this 3rd day of October, 2014, at 5:45 o'clock p.m

Lorraine Wallace
JUDGE PRESIDING

Respectfully submitted,

D. Kimberli Wallace
D. Kimberli Wallace
Texas Bar No. 00792901
D. Kimberli Wallace, PLLC
9500 Ray White Rd., Suite 200
Fort Worth, TX 76244
Tel. (817) 745-4581
Fax. (817) 953-7000
EMAIL: Kwallace@kwlawfirm.net
Attorney for Plaintiff

THE STATE OF TEXAS
DISTRICT COURT, TARRANT COUNTY

ORIGINAL

CITATION

Cause No. 348-274854-14

JOHN D MORALES

VS.

QUEENS PARK OVAL ASSET HOLDING TRUST, ET AL

To and through the Secretary Of State, Statutory Documents Section, PO Box 12079, Austin TX 78711-2079
TO: QUEENS PARK OVAL ASSET HOLDING TRUSTC/O US BANK TRUST NATIONAL ASSOCIATION 300 DELAWARE AVE 9TH FL WILMINGTON,
19801-

SERVICE OF PROCESS MAY BE HAD UPON DEFENDANT BY DELIVERING TO THE SECRETARY OF STATE, OF THE STATE OF TEXAS, DUPLICATE COPIES OF THIS CITATION TOGETHER WITH DUPLICATE COPIES OF THE PLAINTIFF'S PETITION ATTACHED HERETO.

You said DEFENDANT are hereby commanded to appear by filing a written answer to the ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 348th District Court ,401 W BELKNAP, in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

JOHN D MORALES

Filed in said Court on October 3rd, 2014 Against
QUEENS PARK OVAL ASSET HOLDING TRUST, ROUNDPOINT MORTGAGE SERVICING CORPORATION

For suit, said suit being numbered 348-274854-14 the nature of which demand is as shown on said ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER a copy of which accompanies this citation.

D KIMBERLI WALLACE
Attorney for JOHN D MORALES Phone No. (817)745-4581
Address 9500 RAY WHITE RD STE 200 FT WORTH, TX 76244

Thomas A. Wilder , Clerk of the District Court of Tarrant County, Texas. Given under my hand and the seal of said Court, at office in the City of Fort Worth, this the 7th day of October, 2014.

By  Deputy
KIMBERLY KRUMLAND

NOTICE: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM, on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Thomas A. Wilder, Tarrant County District Clerk, 401 W BELKNAP, FORT WORTH TX 76196-0402

OFFICER'S RETURN

Received this Citation on the 7th day of OCT, 2014 at 12 o'clock PM, and executed at PO BOX 12079 AUSTIN TX within the county of TRAVIS, State of TX at 12:40 o'clock PM on the 9th day of OCT, 2014 by delivering to the within named (Def.) QUEENS PARK OVAL ASSET HOLDING TRUST defendant(s), a true copy of this Citation together with the accompanying copy of ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER, having first endorsed on same the date of delivery. NO COPIES MUST BE DELIVERED TO THE CLERK OF THE DISTRICT COURT OR THE CLERK OF THE CIRCUIT CLERK OF THE CIRCUIT COURTAuthorized Person/constable/Sheriff:
County of Tarrant State of TX By _____ Deputy _____Fees \$ _____
State of TX County of Tarrant (Must be verified if served outside the State of Texas)
Signed and sworn to by the said C.V. Kore before me this 13th day of OCT, 2014
to certify which witness my hand and seal of office Lorraine M. RobinsonCounty of Tarrant, State of TX

Exhibit C4

CITATION

Cause No. 348-274854-14

JOHN D MORALES

VS.

QUEENS PARK OVAL ASSET
HOLDING TRUST, ET AL

ISSUED

This 7th day of October, 2014

Thomas A. Wilder
Tarrant County District Clerk
401 W BELKNAP
FORT WORTH TX 76196-0402

By KIMBERLY KRUMLAND Deputy

D KIMBERLI WALLACE
Attorney for: JOHN D MORALES
Phone No. (817)745-4581
ADDRESS: 9500 RAY WHITE RD STE 200

FT WORTH, TX 76244

CIVIL LAW



34827485414000021

SERVICE FEES NOT COLLECTED
BY TARRANT COUNTY DISTRICT CLERK
ORIGINAL

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Secretary of State of Texas
tn: Statutory Docs Section
PO Box 12079
Austin, TX 78711

7012 3460 0003 4564 1800

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X Agent
 AddresseeB. Received by (Printed Name)
*PS Form 3811*C. Date of Delivery
*08-21-14*D. Is delivery address different from item 1? Yes
YES No*854-14*

3. Service Type

- Certified Mail® Priority Mail Express™
 Registered Return Receipt for Merchandise
 Insured Mail Collect on Delivery

4. Restricted Delivery? (Extra Fee)

 Yes

PS Form 3811, July 2013

Domestic Return Receipt

348-274854-14

FILED
TARRANT COUNTY
3/30/2015 4:27:56 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 348-274854-14

JOHN D. MORALES,

IN THE DISTRICT COURT

Plaintiff,

§ 348TH JUDICIAL DISTRICT

V.
QUEENS PARK OVAL ASSET HOLDING
TRUST AND ROUNDPOINT
MORTGAGE SERVICING
CORPORATION,

Defendants.

§ TARRANT COUNTY, TEXAS

DEFENDANTS' ORIGINAL ANSWER

Defendants, Queens Park Oval Asset Holding Trust ("Queens Park") and Roundpoint Mortgage Servicing Corporation ("Roundpoint") (collectively, "Defendants"), file their Original Answer to Plaintiff's Amended Petition and Application for Temporary Restraining Order ("Petition") and respectfully show the Court as follows:

General Denial

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, Defendants generally deny and demand proof of all allegations in Plaintiff's Petition.

Affirmative Defenses and Additional Pleadings

2. Defendants assert that Plaintiff's claims are barred by the statute of frauds.
3. Defendants assert that Plaintiff's claims are barred in whole or in part by Plaintiff's prior breach of contract.
4. Defendants assert that Plaintiff has not completed all conditions precedent to recovery.

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5. Defendants assert that Plaintiff's own acts or omissions caused or contributed to Plaintiff's injury. Thus, Plaintiff's damages are subject to the Texas Proportionate Responsibility statutes as codified in Chapter 33 of the Texas Civil Practice and Remedies Code.

6. Defendants assert that Plaintiff's claims are barred by estoppel, release, ratification, and/or waiver.

7. Defendants assert that Plaintiff has failed to mitigate his damages.

8. Defendants assert there is no duty to provide Plaintiff with a loan modification and there is no private cause of action for such.

9. Defendants assert that Plaintiff lacks standing to challenge any assignments of the Loan.

10. Defendants assert that Plaintiff fails to state a claim upon which relief may be granted.

11. Defendants assert that some or all of Plaintiff's claims are barred by the statute of limitations.

12. Defendants assert that Plaintiff's claims are barred by the doctrine of unclean hands.

13. Defendants assert that any damages incurred by Plaintiff should be offset by the amounts owed to Defendants.

14. Defendants assert that Plaintiff has acknowledged the debt.

15. Defendants assert the affirmative defense of bona fide error under the Texas Debt Collection Practices Act.

348-274854-14

Prayer

Defendants request judgment that Plaintiff takes nothing by this action, and that the Defendants recover costs of court and all other relief to which they may be entitled.

Respectfully submitted,

/s/ Jeremy J. Overbey

J. Garth Fennegan
Texas Bar I.D. 24004642
gfennegan@settlepou.com
Jeremy J. Overbey
Texas Bar I.D. 24046570
joverbey@settlepou.com
Jason M. Brown
Texas Bar I.D 24087220
jbrown@settlepou.com

SETTLEPOU
3333 Lee Parkway, Eighth Floor
Dallas, Texas 75219
(214) 520-3300
(214) 526-4145 (Facsimile)

ATTORNEYS FOR DEFENDANTS

348-274854-14

Certificate of Service

I certify that this document was served in accordance with the Texas Rules of Civil Procedure on March 30, 2015, by the manner indicated upon the following persons:

Via CM/RRR No. 7196 9008 9111 8277 6013

D. Kimberli Wallace
9500 Ray White Rd., Suite 200
Fort Worth, Texas 76244
(817) 745-4581
(817) 953-7000
kwallace@kwlawfirm.net

/s/ Jeremy J. Overbey

Jeremy J. Overbey

Real Estate

03/31/2015

Account Number: 40785971
Georeference: 19077-D-24
Property Location: 8036 CALADIUM DR, NORTH RICHLAND HILLS, 76180

[]

Owner Information: MORALES JOHN D
8036 CALADIUM DR
NORTH RICHLAND HILLS TX 76180-4748

5 Prior Owners:

Legal Description: HOME TOWN NRH WEST
Block: D Lot: 24
Taxing Jurisdictions: 018 CITY OF N RICHLAND HILLS
220 TARRANT COUNTY
902 BIRDVILLE ISD
224 TARRANT COUNTY HOSPITAL
225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in TADP's database.

Certified Values for Tax Year 2014

	Land	Impr	2014 Total ††
Market Value	\$40,000	\$119,100	\$159,100
Appraised Value †	\$40,000	\$119,100	\$159,100
Approximate Size †††			1,372
Land Acres			0.0468
Land SqFt			0

† Appraised value may be less than market value due to state-mandated limitations on value increases.
†† A zero value indicates that the property record has not yet been completed for the indicated tax year.
††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$40,000	\$107,600	\$147,600	\$40,000	\$107,600	\$147,600
2012	\$40,000	\$106,200	\$146,200	\$40,000	\$106,200	\$146,200
2011	\$40,000	\$106,200	\$146,200	\$40,000	\$106,200	\$146,200
2010	\$40,000	\$106,300	\$146,300	\$40,000	\$106,300	\$146,300
2009	\$40,000	\$114,400	\$154,400	\$40,000	\$114,400	\$154,400

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Deed Date: 10/01/2012
Deed Page: 0000000
Deed Volume: 0000000
Instrument: D212261296

Year Built: 2005
Pct Complete: 1.00
TAD Map: 2084-432
MAPSCO: TAR-038X
Agent:

State Code: A Residential SingleFamily

Garage Bays: 2
Central Air: Y
Central Heat: Y
Pool: N

Real Estate

03/31/2015

Account Number: 40785971
Georeference: 19077-D-24
Property Location: 8036 CALADIUM DR, NORTH RICHLAND HILLS, 76180



Owner Information: MORALES JOHN D
8036 CALADIUM DR
NORTH RICHLAND HILLS TX 76180-4748

5 Prior Owners:

Legal Description: HOME TOWN NRH WEST
Block: D Lot: 24
Taxing Jurisdictions: 018 CITY OF N RICHLAND HILLS
220 TARRANT COUNTY
902 BIRDVILLE ISD
224 TARRANT COUNTY HOSPITAL
225 TARRANT COUNTY COLLEGE

This information is intended for reference only and is subject to change. It may not accurately reflect the complete status of the account as actually carried in CAD's database.

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	Land	Impr	2014 Total ††
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† Appraised value may be less than market value due to state-mandated limitations on value increases.
†† A zero value indicates that the property record has not yet been completed for the indicated tax year.
††† Rounded

5-Year Value History

Tax Year	Appraised Land	Appraised Impr	Appraised Total	Market Land	Market Impr	Market Total
2013	\$40,000	\$107,600	\$147,600	\$40,000	\$107,600	\$147,600
2012	\$40,000	\$106,200	\$146,200	\$40,000	\$106,200	\$146,200
2011	\$40,000	\$106,200	\$146,200	\$40,000	\$106,200	\$146,200
2010	\$40,000	\$106,300	\$146,300	\$40,000	\$106,300	\$146,300
2009	\$40,000	\$114,400	\$154,400	\$40,000	\$114,400	\$154,400

2015 Notice Sent:

Protest Deadline:

Exemptions:

Property Data:

Deed Date: 10/01/2012
Deed Page: 0000000
Deed Volume: 0000000
Instrument: D212261296

Year Built: 2005
Pct Complete: 1.00
TAD Map: 2084-432
MAPSCO: TAR-038X
Agent:

State Code: A Residential SingleFamily
Garage Bays: 2
Central Air: Y
Central Heat: Y
Pool: N

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JOHN D. MORALES,

§

Plaintiffs,

§

v.

§

QUEENS PARK OVAL ASSET HOLDING
TRUST and ROUNDPOINT MORTGAGE
SERVICING CORPORATION,

§

§

§

§

Defendants.

§

CIVIL ACTION NO.

**CERTIFICATE OF INTERESTED PERSONS AND
RULE 7.1 DISCLOSURE STATEMENT**

Pursuant to Rule 7.1 of the Federal Rules of Civil Procedure and Northern District of Texas Local Rule 7.4, Defendant, RoundPoint Mortgage Servicing Corporation (“RoundPoint”), identifies the following persons and entities that are financially interested in the outcome of this litigation:

1. John D. Morales, Plaintiff

Attorney of Record

D. Kimberli Wallace
9500 Ray White Rd., Suite 200
Fort Worth, Texas 76244
(817) 745-4581
(817) 953-7000
kwallace@kwlawfirm.net

2. Queens Park Oval Asset Holding Trust, Defendant

Attorneys of Record

J. Garth Fennegan
Texas Bar I.D. 24004642
gfennegan@settlepou.com
Jeremy J. Overbey
Texas Bar I.D. 24046570
joverbey@settlepou.com

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JOHN D. MORALES, §
§
Plaintiffs, §
v. § CIVIL ACTION NO.
§
QUEENS PARK OVAL ASSET HOLDING §
TRUST and ROUNDPOINT MORTGAGE §
SERVICING CORPORATION, §
§
Defendants. §

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(214) 526-4145 (Facsimile)

Queens Park Oval Asset Holding Trust (“Queens Park”) is a Delaware Statutory Trust. It has no parent and no corporation owns 10% or more of any of its stock. Queens Park’s trustee is U.S. Bank National Trust Association.

3. RoundPoint Mortgage Servicing Corporation, Defendant

Attorneys of Record
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RoundPoint Mortgage Servicing Corporation is a wholly-owned subsidiary of RoundPoint Financial Group, with no publicly held entity owning more than 10% of RoundPoint.

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3. RoundPoint Mortgage Servicing Corporation, Defendant

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Respectfully Submitted,

/s/ Jeremy J. Overbey

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ATTORNEYS FOR DEFENDANTS

Respectfully Submitted,

/s/ Jeremy J. Overbey

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ATTORNEYS FOR DEFENDANTS

Certificate of Service

I certify that this document was served in accordance with the Texas Rules of Civil Procedure on April ___, 2015, by the manner indicated upon the following persons:

Via CM/RRR No.

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/s/ Jeremy J. Overbey
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